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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourteenth session

SUMMARY RECORD OF THE 15TH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 9 May 1996, at 10 a.m.

Chairperson: Mr. ALSTON

later: Mr.CEAUSU

CONTENTS

OTHER MATTERS

REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of El Salvador

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GE.96-16233 (E)

The meeting was called to order at 10.20 a.m.

OTHER MATTERS

1. The CHAIRPERSON said that he had received a report from the United Nations Educational, Scientific and Cultural Organization (UNESCO) entitled "Our Creative Diversity", which had been issued by the World Commission on Culture and Development, chaired by Mr. Pérez de Cuéllar. The report referred to cultural rights and to the Covenant but not to article 15, on the right to take part in cultural life, nor did it mention the Committee. It concluded with recommendations for the promotion of cultural rights, stating that they deserved the same protection as human rights. That of course had been the objective since the adoption of the Covenant in 1966. The World Commission also recommended that the International Law Commission should be requested to draft an international code of conduct on culture; it proposed the establishment of an international office of ombudsman for cultural rights and suggested that the code should be taken into account when the future international criminal court was dealing with violations of cultural rights. The report was a classic example of complete lack of awareness of the Committee's work and of the tendency to recommend grand utopian schemes which would arrive at nothing. At the same time people neglected the potential of the Covenant, which was designed precisely to ensure respect for cultural as well as other rights.

2. Since the Secretariat could not arrange for the translation of the draft conclusions on Guinea, which had not yet submitted its initial report, he suggested that Mr. Simma should be asked to introduce them orally so that members would be able to amend them later on the basis of the interpretation into French and Spanish.

REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Initial report of El Salvador (E/1990/5/Add.25; HRI/CORE/1/Add.34; E/C.12/1995/LQ.8)

3. At the invitation of the Chairperson, Mr. Kellman, Mr. Mendoza, Ms. Escobar and Ms. Alvarado-Overdiek (El Salvador) took places at the Committee table.

4. Mr. MENDOZA (El Salvador) said that his delegation welcomed the opportunity to present to the Committee the initial report of El Salvador (E/1990/5/Add.25) and to answer the Committee's questions about the implementation of the first 15 articles of the Covenant. In order to foster a fruitful dialogue with the Committee, the Government of El Salvador had requested Mr. Kellman, Chief of the Social Unit at the Ministry of Foreign Affairs, to come to Geneva to lead the delegation. He was sorry that his Government's written replies had reached him only that same morning and he requested Mr. Kellman to introduce the report and the written replies.

5. The CHAIRPERSON said that the written replies would be distributed to the members of the Committee during the meeting.

6. Mr. KELLMAN (El Salvador) recalled that the peace agreements between the parties to the conflict in El Salvador had been signed on 16 January 1992. At the end of the 1970s, armed conflicts had plunged the country into violence and caused heavy loss of life. The conflicts had exacerbated the economic crisis, impoverished the people and harmed all sectors of Salvadorian society. Since 1992 the peace policy had been consolidated, and the Government was doing everything possible to achieve social peace. On taking office in 1994, President Calderón Sol had stated that he was determined that the poor should not be condemned to remain poor and he had launched the National Economic and Social Development Plan 1994-1999. The goal was to consolidate democracy and peace and integrate El Salvador in the world economy by fighting a systematic battle against poverty, promoting comprehensive individual development through equality of opportunity, and improving the living standards and quality of life of all Salvadorians. The aim was also to modernize the public sector in order to provide better support for the private sector, and to protect the environment and natural resources in order to secure integrated, sustained and durable development in that regard.

7. In 1996, 31 per cent of the total State budget had been allocated to social action. Positive results had been achieved in 1995 in education, and the draft education reform produced by the Commission for Science, Education and Development had been approved. The Commission, in which various sectors of Salvadorian society were represented, had worked in collaboration with the Ministry of Education to lay the foundations of the 10-year education plan. A new Higher Education Act had been adopted, and in April 1996 the Legislative Assembly had approved new legislation on the teaching profession. School curricula, from the nursery to the pre-baccalaureate levels, had been rewritten. Primary schools had been provided, free of charge, with textbooks, exercise books and other teaching materials, and teachers at the relevant levels had been trained in the new curricula.

8. In rural areas the "alternative classrooms" programme had been introduced in order to improve access to education, and school attendance had risen by 7.1 per cent over the 1994 figure, representing a nationwide total of 1,640,000 pupils. Mention should also be made of the EDUCO programme, for it had led to an increase of 53 per cent in school attendance in rural areas in comparison with 1994. Heads of families, in particular members of community associations supported by the Ministry of Education, had participated in the programme.

9. The Salvadorian Social Security Institute had been reorganized, and a project on reform of the health sector had been carried out with the aid of the World Bank and the Inter-American Development Bank. The incidence of poliomyelitis, diphtheria and malaria had fallen, and the production of rabies vaccine had doubled since 1994. In addition, 74 per cent of the sugar harvested in 1994/95 had been enriched with vitamin A, and 99 per cent of salt production had been iodized. Ten per cent of corn flour had been fortified with iron since October 1995. New high-technology equipment had been installed in 10 national hospitals, and several health centres and dispensaries had been opened or renovated. In order to protect people living in border areas, a buffer zone had been established between Guatemala, Honduras and El Salvador. The "escuelas saludables" (healthy schools) programme had also been established.

10. The National Secretariat for the Family played a leading role in the Government's social strategy. The Government had also launched a programme to combat violence in the family in conjunction with the Ministry of Public Health and Social Welfare, the Supreme Court of Justice, the Ministry of Public Security, and the Office of the Attorney-General, as well as with the Salvadorian Institute for the Protection of Minors and the municipality of San Salvador. In addition, the authorities were considering a reform of the Penal Code in order to provide better protection for children and women.

11. The CHAIRPERSON thanked Mr. Kellman for his very detailed introduction. However, the Committee would prefer to discuss specific issues with the delegation. The written replies to the questions put by the Committee in the list of issues to be taken up (E/C.12/1995/LQ.8) should be the starting point for the discussion. He suggested that the issues should be taken one by one but first requested the delegation to give a brief summary of the Government's written replies on issues 1 to 6.

12. Mr. KELLMAN (El Salvador) said that for four years now the Government had been giving priority to the fight against poverty, promoting social development and assisting the most vulnerable persons in society. He drew attention to the activities of the United Nations Observer Mission in El Salvador (ONUSAL) and to the fact that 31.3 per cent of the budget was allocated to social action, although the World Summit for Social Development had set an upper target of only 20 per cent. The Government's objective was to allocate 50 per cent of the State budget to social action in 1999.

13. With regard to question 2 in the list of issues, the 1962 Constitution had already guaranteed a range of economic, social and cultural rights, and the rights set out in the Covenant had been incorporated in El Salvador's legal system. With regard to question 3, the rights contained in the Covenant could be invoked before the courts, and two actions of amparo concerning the protection of social rights had been brought before the Supreme Court of Justice in 1985 and 1986.

14. Mr. Ceausu took the Chair.

15. Mr. SIMMA congratulated the Salvadorian delegation on the presentation of its initial report, which was full of very illuminating information. However, the information contained in the core document on El Salvador (HRI/CORE/1/Add.34) relevant to questions 2 and 3 of the list of issues, concerning the relative status of secondary laws and the treaties ratified by El Salvador, seemed confused or even contradictory. He would be grateful if the delegation could describe more clearly the relationship between those legal instruments.

16. The reply to question 3 stated that anyone could invoke the provisions of the Covenant in court. He would like to know what the practice of the courts was when the provisions of the Covenant seemed to the judge to be too general to apply to the case before him. Again, how did El Salvador ensure that the obligation to implement the Covenant was fulfilled in such cases?

17. The Salvadorian delegation had referred to a case in which the Supreme Court had authorized a plaintiff to bring an action of amparo in a case

connected with the exercise of economic, social and cultural rights; he would welcome further information about the case in question and, if possible, a copy of the text of the decision of the Supreme Court.

18. Mrs. BONOAN-DANDAN thanked the Salvadorian delegation for its written answers to the list of issues. However, she was disappointed to note that the State party had not provided the Committee with the additional specific information it was expecting about the demographic, economic, social and cultural situation in El Salvador. It would be useful for the Committee to have at least some indicative information about the composition of the population, in particular the indigenous peoples, to supplement the summary information about the territory and population provided in the initial report.

19. Mr. MARCHAN ROMERO said that in its written reply to question 4 the Government had stated that, in the consideration of the reports received by the Office of the Procurator for the Defence of Human Rights, civil and political rights had been given priority over economic, social and cultural rights. He wondered whether that constituted a value judgement incompatible with the principle of the indivisibility of human rights and impeded the exercise of economic, social and cultural rights.

20. Mr. TEXIER said that the initial report was being considered at the very moment when the important peace process initiated some years earlier had just been completed after a long and bloody civil war which had left El Salvador with serious problems of every kind.

21. With regard to the question just asked by Mr. Marchan Romero, the priority given to civil and political rights dated back to a stage which was now over. ONUSAL had in fact been established in El Salvador with the main aim of putting an end to violations of civil and political rights without neglecting economic, social and cultural rights, especially those relating to real estate. That stage had been completed and priority should in fact now be given to economic, social and cultural rights.

22. As to the reply to question 5 concerning the publicizing of the Covenant, in which the Salvadorian Government had stated that it had not received the necessary information, he pointed out that the Centre for Human Rights, during a recent mission in El Salvador, had proposed making its technical cooperation services available in order to help El Salvador to bring the Covenant to the attention of the people. Perhaps the delegation could tell him what the situation was in that regard and whether the Government intended to accept the Centre's proposal.

23. Mrs. JIMENEZ BUTRAGUEÑO requested the delegation to provide the Committee with further information about the possibilities of bringing an action of amparo in legal proceedings concerning the exercise of economic, social and cultural rights.

24. Mr. SIMMA noted that El Salvador had stated in its written reply to question 4 that the new Procurator for the Defence of Human Rights had created a Department of Social and Cultural Rights. It would be useful for the Committee to know the exact function of that body with respect to economic, social and cultural rights.

25. Mr. KELLMAN (El Salvador), replying to Mr. Simma's question, said article 144 of the Constitution stipulated that the international instruments ratified by El Salvador became laws of the Republic from the date of entry into force. In the event of a conflict with a provision of domestic law, it was the international instrument that prevailed. From the time of incorporation, the international instrument constituted a so-called secondary law of the Republic and the political and judicial authorities were required to apply it. With regard to the legal right to invoke the provisions of international instruments before Salvadorian courts, article 11 of the 1983 Constitution guaranteed everyone the right to a remedy in law, so that all the rights of the individual - personal, social or political - were expressly protected.

26. With regard to Mrs. Bonoan-Dandan's request for demographic information, indigenous peoples constituted about 5 per cent of the total population, an indicative figure which he hoped to confirm at the following meeting. As to the cultural situation in El Salvador, article 62 of the Constitution stated that the official language and language of education was Spanish. However, the indigenous languages were part of the national cultural heritage and they were propagated and respected. In that connection, the National Council for Culture had created the National Office of Indigenous Affairs to promote the development of the indigenous peoples and of their culture and language.

27. With reference to Mr. Marchan Romero's question, there was not really any difference of status between civil and political rights and economic, social and cultural rights. In recent times, as Mr. Texier had explained, the main goal in El Salvador had been to secure peace and to settle the armed political conflict, followed by social peace that would include protection of economic, social and cultural rights on an equal footing with civil and political rights. The fact that the Procurator for the Defence of Human Rights had received more communications about civil and political rights than about economic, social and cultural rights certainly did not mean that the Government regarded the latter rights as being of secondary importance.

28. He was able to inform Mr. Texier that the Government was in the process of drawing up projects which could be implemented within the framework of technical assistance to strengthen the protection and promotion of economic, social and cultural rights.

29. Mr. RATTRAY said that he had noted with great interest the information given by the delegation about the incorporation of international instruments in domestic law and about the status of the rights contained in those instruments in Salvadorian legislation. He noted with satisfaction that the legislation stipulated that everyone had a right to due process. He would like to know in that connection whether the delegation knew of any cases in which the Salvadorian courts had handed down decisions recognizing a violation of a right contained in the Covenant.

30. Mrs. BONOAN-DANDAN said that El Salvador had not submitted written information about the implementation of article 15, on the right to participate in cultural life. She therefore requested the Salvadorian delegation to include appropriate information about indigenous peoples in its oral replies to the Committee on the implementation of article 15.

31. Mr. ADEKUOYE said he would like to know whether the Government of El Salvador had established a machinery for liaison with non-governmental organizations (NGOs) and whether it held regular meetings with them. He would also like to know how often cases of violation of human rights were examined, whether the findings were published for the public at large, and how the people had access to such information.

32. Mr. KELLMAN (El Salvador), replying to the question about the Government's relations with NGOs, said that NGOs had been consulted during the preparation of the reports submitted to the International Conference on Population and Development, in Cairo in 1994, the Fourth World Conference on Women, in Beijing in 1995, and the United Nations Conference on Human Settlements, in Istanbul in 1996, as well as in the drafting of other reports. The basic aims of the National Women's Institute, created in March 1996, had been determined in consultation with representatives of NGOs during periodic meetings with them. It was also intended that NGO-elected representatives should participate in the Institute's governing board. The content of the reports of the Office of the Procurator for the Defence of Human Rights were in fact published by the Office in the written media in summary or other form. Campaigns were conducted to make people aware of human rights, in order to explain what people's rights were, how to exercise them and how to make sure they were respected.

33. Mrs. JIMENEZ BUTRAGUEÑO asked whether a unit of the Office of the Procurator for the Defence of Human Rights was concerned in particular with the rights of the elderly and what the Government was doing for that age group.

34. Mr. KELLMAN (El Salvador) said that the Office had several deputy procurators, one of whom, a recent appointee, was concerned with the elderly. A senior citizen unit had also been created by the National Secretariat for the Family. In addition, the Family Code imposed on children obligations towards their parents; if those obligations were not met, the parents could take legal action.

35. Turning to the questions in the list of issues concerning the general provisions of the Covenant (arts. 1 to 5), he said with respect to question 7, on people living in the border area between Honduras and El Salvador, that the issue of their status had been the subject of a judgement of the International Court of Justice dated 11 September 1992, in which the Court had awarded Honduras 311.66 square kilometres of territory which had previously belonged to El Salvador. In order to ensure respect for acquired rights, in particular nationality and property rights, it had been decided to establish a bilateral El Salvador-Honduras commission. El Salvador experienced no difficulty in recognizing and guaranteeing the rights dealt with by the commission, since they were already guaranteed by its legislation, in particular article 90.3 of the Constitution, under which the status of native-born Salvadorian could be conferred on anyone of Central American origin. For example, Hondurans who had found themselves in Salvadorian territory subsequent to the Court's judgement could acquire the status of native-born Salvadorians without, however, giving up their Honduran nationality. The same did not apply to Salvadorians in Honduras, for Honduran legislation stipulated that persons of Central American origin could become Hondurans only by naturalization (art. 24

of the Constitution of Honduras) and that, moreover, property located within 40 kilometres of the frontier could be acquired only by native-born Hondurans (art. 107 of the Constitution). El Salvador requested respect for acquired rights with regard to nationality, property and ownership, in accordance with paragraph 66 of the Court's judgement. The persons concerned could not be denied their rights simply on the grounds of nationality and must be able to exercise them without any discrimination, in accordance with article 2 of the Covenant. The two countries were currently negctiating an international treaty to recognize and guarantee the acquired rights of the people living in the border areas.

36. With regard to the situation of foreigners living in El Salvador and their possibilities of exercising the rights recognized in the Covenant, article 3 of the Constitution established equality before the law and stipulated that the exercise of rights could not be subject to any restrictions based on nationality, sex or religion, while article 38.1 stated the principle of equal pay for equal work without distinction as to race, nationality, religion or sex. Foreigners thus enjoyed all their rights in El Salvador.

37. With respect to equality of men and women in the field of economic, social and cultural rights, El Salvador had ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women on 23 August 1995, and on 17 March 1996 it had inaugurated the National Women's Institute, an independent body reporting to the Office of the President and responsible, inter alia, for supervising the implementation of policies for the advancement of women (currently formulated by an NGO expert) and promoting equality of opportunity for men and women, and reforming legislation discriminating against women.

38. Mr. ALVAREZ VITA said that he welcomed the participation of NGOs in the preparation of the report by El Salvador and asked whether the option of renouncing Salvadorian nationality was recognized by the Constitution, as was often the case in Latin America. If it was not, it might be advisable to amend the Constitution, since the dispute between the two countries - El Salvador and Honduras - had already lasted 10 years.

39. With regard to equality of men and women, he sought clarification about cases in which the Salvadorian system favoured men over women in separation or divorce. Why did El Salvador maintain in that regard a situation which conflicted with the Covenant and the International Convention on the Elimination of All Forms of Racial Discrimination? He would also like to know what action was being taken to simplify family-law procedures, for it had been stated that the shortage of funds to pay for the services of a lawyer was impeding the application of the legislation. Lastly, in connection with women's access to the professions, he would like to know whether they occupied any but subordinate posts in the police and the armed forces.

40. Mr. SIMMA, referring to the written reply to question 7, concerning people living in the border area between Honduras and El Salvador, requested clarification of the arrangement whereby Honduran nationals could acquire Salvadorian nationality by birth ("por nacimiento").

41. Mr. ADEKUOYE, referring to paragraph 18 of the initial report, said he wondered whether the provisions of article 115 of the Constitution, according to which industrial and commercial activity and the provision of services were the prerogatives of Salvadorians by birth and nationals of Central America, did not amount to discrimination. He would also like to know whether there were any restrictions on the share of foreigners in company capital. It was his understanding that non-Salvadorians did not have the right to join trade unions and he wondered why. He had not found any reference in the documents to the disabled, a category of persons which was at a disadvantage in a competitive society and must not be forgotten. Lastly, with regard to the status of women he would like to know whether women had free access to loans.

42. Mrs. BONOAN-DANDAN said that, although she was anticipating the consideration of the implementation of other articles of the Covenant, she would like to put a question about article 10 in order to give the Salvadorian delegation time to think about it. Her question was on the articles of the Civil Code concerning the effects of marriage. Reading out paragraphs 95 and 96 of the initial report, she asked whether married women were always subject to the authority of their husbands and requested clarification of the content of the two paragraphs. She would also welcome a more detailed response to question 10 and clarification of the status and effects of adultery and non-matrimonial union in terms of the Civil Code and would like to know whether, taken together, the legislation on matrimonial relations was more or less favourable to one of the spouses.

43. Mrs. JIMENEZ BUTRAGUEÑO said that she shared the concerns expressed by Mr. Adekuoye and Mrs. Bonoan-Dandan about the status of women and would also welcome information about the true situation of women in El Salvador, regardless of the content of the law. For example, did women actually have to request permission from their husbands before initiating an administrative or financial procedure?

44. Mr. GRISSA said that he too wished to take up a point connected with the implementation of article 10: he would like to know more about the situation described in paragraph 100 of the initial report, in which presumption of death did not produce dissolution of the marriage.

45. Mr. KELLMAN (El Salvador) said that, with regard to the problem of the nationality of people living in the border region between Honduras and El Salvador, there would be no point in amending the Salvadorian Constitution, since it already recognized the right to hold two or more nationalities. Accordingly, Salvadorians who had renounced their nationality to a foreign authority and then returned to El Salvador continued to enjoy Salvadorian nationality. The problem was that, under article 107 of the Constitution of Honduras the right to acquire and own land in the border regions was accorded only to native-born Hondurans.

46. He agreed that equality between men and women had not yet been fully realized in El Salvador since, as in many countries and as pointed out in the written replies, the social system and people's attitudes were still sexist in some circumstances. It was in order to promote genuine equality of men and women that the Government was taking measures in the legal, educational and

other fields. Some members of the police and armed forces were women, a number of them occupying positions of responsibility. Women also held senior posts in political bodies and some women were now becoming judges.

47. Turning to another question, he said that nationality could be acquired by birth or by naturalization. In the first case, anyone born in Salvadorian territory had Salvadorian nationality. It must also be remembered that article 90 of the Constitution provided that persons from other countries members of the Federal Republic of Central America who lived in El Salvador could, on request and without having to renounce their original nationality, be regarded as Salvadorians by birth ("por nacimiento").

48. As to access to loans, in theory and in law women were entitled to ask for credit and to be granted loans in their personal capacity. Nevertheless, the possibility of "slip-ups" in the application of that principle could not be excluded, for a bank employee or other official might decide to impose more restrictive terms on applications from women. In principle, however, there was no discrimination.

49. As to the conditions for starting up businesses, the minimum capital requirement and the special treatment of native-born Salvadorians and persons born in Central America, he could say right away that the measures were designed to encourage private enterprise and the creation of small- and medium-sized businesses and did not contain any element of discrimination. At a later stage he would give the Committee more specific information on that point, with references to the Commercial Code. In order to be able to provide more accurate information, he would also defer answering the question about trade unions to a future meeting.

The meeting rose at 1 p.m.